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March 27, 1996

CC 96-115

Regina M. Keeney
Chief, Common Carrier Bureau
1919 M Street N.W., Room 500
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS
COMMISSION

Dear Ms. Keeney:

On or about March 5, 1996, NYNEX filed a Petition for Declaratory Ruling concerning the interpretation of Section 222 of the Communications Act, that Section being the newly-enacted legislative CPNI provisions of the Telecommunications Act of 1996 (1996 Act). In its Petition, NYNEX proposes a "bucket approach" to CPNI use and asks for a declaration that its proposed landline "bucket approach," which would create an intraLATA telecommunications service bucket (including information about local and intraLATA toll) and an interLATA toll telecommunications bucket, is reasonable under the statute. While not asking for a declaration about how wireless services might be treated under the statute, NYNEX proclaims its intention to put wireless services into a separate bucket. (NYNEX Petition at 3-4.)

By this correspondence, U S WEST, Inc., wishes to advise the Federal Communications Commission that it does not read the CPNI provisions of the 1996 Act as narrowly as NYNEX. U S WEST believes that the provisions can be read, as even NYNEX suggests, to support the broad use of CPNI within a carrier's provision of telecommunications services. (NYNEX Petition at 3, n.8.)

The FCC has broad discretion with respect to how it interprets the CPNI provisions. U S WEST urges that, consistent with past FCC practice and interpretation, the FCC construe the statutory provisions in a manner that promotes maximum flexibility regarding a business' use of its own commercial information and allows, to the broadest extent possible, customers expectations regarding the use of that information to be realized.

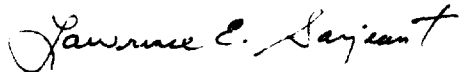
U S WEST does not believe that the approach suggested by NYNEX renders such a result (or at least not with the specific parameters

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suggested by NYNEX). Should the FCC put the NYNEX Petition out for comment, U S WEST will provide additional in-depth support for why it believes it is an unduly restrictive reading of the 1996 Act, and why a broader reading is not only supported by the language of the Act but better serves the public interest.

Sincerely,

A handwritten signature in cursive script, reading "Lawrence E. Sargent".

cc: John Nakahata
Lauren Belvin
Todd Silbergeld
James Casserly
Dan Gonzalez
A. Richard Metzger
Kathleen Levitz
Richard Welch
Rose Crellin

CPNI Provisions of Telecommunications Act Should be Construed Broadly

- Act of 1996 should be construed broadly so that benefits associated with broad use of commercial information in crafting telecommunications products/services desirable in the marketplace continue to be realized
- Businesses should be able to use CPNI as a resource and at point of sale/contact to fashion “telecommunications service” package best suited to consumer within one-stop shopping experience
- Statutory language should be construed in context of prior FCC findings in the area of consumer privacy and commercial business relationships

Statutory Language is No Barrier to Broad Interpretation

- 1996 Telecommunications Act is deregulatory -- not regulatory; CPNI provisions are privacy provisions -- not competitive equalizers. Statute must be construed in this context
- Two possible points of tension with respect to interpretations: the term “telecommunications service” and “approval.” Broad, flexible interpretations are permissible under Act and should be adopted
- Interpretations of both provisions should be aligned with existing business practices and consumer expectations -- both privacy and shopping expectations

FCC CPNI/Privacy Findings:

The Business/Consumer Relationship is Key

- Despite years of industry debate, FCC has never wavered from its position that customers' privacy interests are not compromised by broad use of business information and that such use promotes consumer welfare
- FCC has relied on the nature of the relationship to determine the consumer expectations and the appropriate regulatory safeguards
- FCC has supported broad use of business information between companies and their affiliates
- Implied consent or approval has been found appropriate with respect to use of CPNI

Within Existing Business Relationship, “Privacy” Expectations Do Not Support Restricting Business Use of Information

- Consumers in existing relationship with business do not have privacy “concerns” that warrant restricting use of business information to sell additional products and services
 - ◆ Computer II/III Orders
 - BOCs’ customers would not object to CPNI being broadly available to increase the offerings made available to them
 - 1988 Third Computer Inquiry, 3 FCC Rcd. at 1163 para. 98
 - ◆ privacy interests not adversely affected when voluntary business relationship exists -- 1992 TCPA NPRM, 7 FCC Rcd. at 2738 paras. 13-14
 - ◆ existing business relationship renders solicitations invited and does not compromise privacy interests -- 1992 TCPA Order, 7 FCC Rcd. at 8770 para. 34
 - ◆ solicitation permitted for directly related products and services because of relationship -- 1994 Caller ID/ANI Order, 9 FCC Rcd. at 1773-74 para. 58

Customers Want One-Stop Shopping; Ability to Provide Same Requires Knowledge of Customers' Needs/Existing Services

- FCC has repeatedly found that consumers want “one-stop shopping” and that there are market benefits associated with satisfying desire
 - ♦ FCC CPE & ONA Orders
 - “polls and surveys . . . indicate that a broad spectrum of communications users desire vendors that can be single sources for telecommunications products. . . . We see substantial benefit for users [in allowing] service operations in the most efficient way to satisfy their customers needs” -- BOC CPE Relief Order, 2 FCC Rcd. at 147-48
 - “subscribers desire [] ‘one stop shopping’” -- ONA Phase I NPRM, 50 Fed. Reg. at 33592 n.58
 - “CPNI rules not only allow [joint marketing] but also provide direct benefits to customers in the form of one-stop shopping” -
- CI III R&O, 6 FCC Rcd. at 7609-10 para. 85

Customers Want One Stop-Shopping; Ability to Provide Same Requires Knowledge of Customers' Needs/Existing Services (Cont'd)

- FCC has affirmatively found that consumers want “one-stop shopping” and there are market benefits associated with satisfying desire
 - ◆ inability to share information would undercut consumer benefit of allowing “customers the ability to engage in ‘one-stop shopping’ for their telecommunications needs” -- FCC AT&T/McCaw Orders, 9 FCC Rcd. at 5886 para. 83; ability of consumer, especially one with infrequent contact with service providers, to “have one point of contact with a provider of multiple services is efficient and avoids . . . customer confusion . . . ‘One stop shopping’ promotes efficiency and avoids consumer confusion.” -- 10 FCC Rcd. at 11795-96 paras. 15-16
 - ◆ regulatory mandates can operate to impede normal business operations that can skew market such that “customers will seek out those companies that provide ‘one stop shopping’” and avoid others -- Cellular Service/CPE Order, 57 Rad. Reg. 2d (P&F) 989 para. 18
 - ◆ “SBMS intends to offer customers ‘one-stop shopping’ and . . . [w]e agree . . . that this proposed integration of wireless and landline services offers substantial benefits” -- SBMS M&O, 1995 FCC LEXIS 6984 at para. 19

Sharing Information With Affiliates to Provide Best Telecommunications Service Package Does Not Compromise Privacy Expectations and Advances Overall Consumer Welfare Associated With One-Stop Shopping

- The “business relationship” and the benefits that flow from it extend to communications from and with affiliate entities
 - ♦ sharing of information between and among affiliates is not improper and increases consumer awareness of goods and services -- AT&T Credit Card Order, 8 FCC Rcd. at 8787 para. 27
 - ♦ established business relationship extends to affiliate for marketing; does not do so for “do-not-call” requests unless made explicit -- 1992 TCPA Order, 7 FCC Rcd. at 8770 para. 34
 - ♦ 63% surveyed did not object to affiliate sharing, and approval figures went up as benefits associated with specific fact situations were discussed -- 1994 Louis Harris Survey

Customer Approval For CPNI Use Deemed Invited by Existing Business Relationship

- FCC has precedent for finding that existing business relationship supports finding of invitation, permission, approval with respect to various business activities
 - ◆ BOC ONA Orders (to use CPNI, unless restricted)
Phase II Recon. Order, 3 FCC Rcd. at 1163 para 98
 - ◆ 1992 TCPA Order (to solicit individual, unless requested not to)
7 FCC Rcd. at 8770 para. 34
- This model is most consistent with First Amendment and the promotion of speech because it allows for free-flowing communication unless asked specifically not to communicate
- This model is consistent with basic business structures and practices, including those utilized by non-telecommunications providers and collectors of transactional information (ESPs, IPs, Retail Service Providers, etc.)

Existing Business Expectation is that CPNI is a Commercial Business Asset

- CPNI is commercial business information stemming from the relationship/potential relationship of a customer to a company - “U S WEST’s business information includes all transactional information . . . from our network (and our multimedia) operations” -- U S WEST 1994 Comments at 26.
- “U S WEST considers our customer information [CPNI] trade secret information and it is so treated and protected” -- U S WEST 1994 Comments at 28 n.58

Business Must be Able to Use Business Information to Provide Quality Service to Consumers

- Businesses must be able to use commercial information to fashion new products and services, to target market, to match consumers and products efficiently and effectively
- Business must be able to satisfy customer expectation that business knows about consumer because of existing relationship
- Regulations should not operate to frustrate and confuse consumers or add inefficiencies into delivery of services to them

Customer “Approval” Requirements Should be Liberal and Not Unduly Burdensome to Business Operations

- Customer approvals should be determined by relationships and comport with existing business practices that reflect customer expectations
- FCC has stated that restrictive prior approval requirements can be expected to eliminate one-stop shopping benefits
 - ◆ affirmative-type approval requirements “would as a practical matter deny . . . the one-stop shopping benefits of integrated marketing” -- 1994 CPNI Public Notice, 9 FCC Rcd. 1685 (1994)
 - ◆ “Under a[n] [affirmative-type] prior authorization rule, a large majority of mass market customers are likely to have their CPNI restricted through inaction [and] would vitiate . . . efficiencies [of] integrated marketing” -- CI III Remand, 6 FCC Rcd. at 7610, n. 155